

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 03-CR-191

JAMES HOLMES,

Defendant.

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**ORDER**

On March 11, 2004, the court sentenced James Holmes after he pled guilty to “Being a Felon in Possession of a Firearm.” At sentencing, the court determined that Mr. Holmes was an “Armed Career Criminal” under 18 U.S.C. § 924(e), and was therefore subject to a mandatory minimum term of fifteen years in prison. The court accordingly sentenced Mr. Holmes to 180 months to be followed by a five-year period of supervised release.

On March 9, 2009, Mr. Holmes filed a Motion for Reduction in term of imprisonment (Docket #31). Mr. Holmes contended that the court erroneously enhanced his sentence utilizing U.S.S.G. § 4B1.1. The gravamen of his argument is that § 4B1.1 categorizes a defendant as a “Career Offender” when certain conditions are met, one of which is that “the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense,” and that this condition was not met. Indeed, this condition was not met because, as previously stated, he was sentenced for “Being a Felon in Possession of a Firearm,” which is

not a “crime of violence,” per the Sentencing Commissions Amendment 433. Thus, Mr. Holmes seeks to be re-sentenced, without the enhancement being applied.

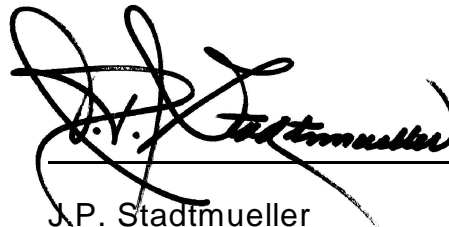
In addition to being untimely, Mr. Holmes motion is mistaken as to the fundamentals. Mr. Holmes was not held to be a “Career Offender” based on § 4B1.1, he was found to be an “Armed Career Criminal” based on § 4B1.4. The three previous convictions that served as predicates for the enhancement were: a conviction for “Battery by a Prisoner,” “Substantial Battery,” and “Manufacture or Delivery of Schedule II Narcotics.” Thus, the enhancement was properly applied.

Accordingly,

**IT IS ORDERED** that James Holmes's Motion for Reduction in term of imprisonment (Docket #31) be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 10th day of April, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller  
U.S. District Judge